

**ZONING BOARD OF ADJUSTMENT  
MINUTES  
JULY 8, 2003  
(Approved and amended 8/5/03)**

**PRESENT:** Forrest Esenwine, Chairman; June Purington; Jack Dearborn; Harry Wetherbee; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Jeff Cloutier; Pat Hines; Robert Hines; Robert Palmer, LLS; Michael J. Ryan; Peter Scott; Sandra Scott; David Bridgeman; Kathleen Bridgeman; Gerry Beique; Ginger Esenwine; Linda Chatfield; David Collier; Terry Proctor; Jan Proctor; Eric Peterson; Kim Peterson; Matt Esenwine; Eric Grenier; Meri-Lyn Worthen; Don Miller; Michelle Miller.

**I. CALL TO ORDER:**

Chairman Forrest Esenwine called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Esenwine asked the members present to introduce themselves and explained the procedure in which the board conducts its business. Chairman Esenwine appointed Harry Wetherbee to sit as a full voting member for tonight's meeting.

**II. PUBLIC HEARINGS:**

Case #0903 William H. Boisvert (Continued Hearing)  
Administrative Appeal  
Applicant alleges that the Building Inspector made an error on 1/30/03 by not allowing single-family homes to be constructed on lots utilizing a common driveway.  
Tax Map 406-51.3, 51.6 & 51.7 River Road

Attorney Mike Ryan and Robert Palmer were present on behalf of Mr. William Boisvert. Mr. Ryan explained that the people that want to buy the lots from Mr. Boisvert want to utilize a common driveway. Mr. Boisvert asked the building inspector for building permits and he said no because that they need to use the frontage that is on River Road for each of the lots. They are appealing it because it is their position that there is nothing in the Town of Weare Zoning Ordinance or Planning Board rules or regulations that require the use of the frontage on the road for the driveway. In this particular case it actually makes more sense not too because along the road in front of these lots is actually a wildlife run and it is also

wetlands. Mr. Boisvert would have to go through, get permission from the wetlands board to build the driveways across it, although he would probably get it it makes more sense to have one common driveway. But their position is basically that there is no basis in law or the building inspector to have denied the building permits. The definition of frontage in the Weare Zoning Ordinance does not in fact say that frontage has to be used for a driveway. The definition of driveway does not say frontage has to be used. If that was the intention then that should be in the ordinance. Mr. Ryan stated that he has looked through the ordinance book and the definition section and neither of those definitions require that in fact frontage be used as the access to the property. Absence that there is no prohibition against using a common driveway for lots that have frontage. Mr. Ryan added, that he could understand it if they didn't have frontage and they were trying to get around having frontage, but this isn't that instance. They all have 200 feet of frontage and therefore they should be allowed to build and that is basically their position that without some basis in law the building inspector is wrong. So they are asking the board to overturn his decision and require him to issue the building permits so that single-family houses can be built on these lots. Mr. Ryan continued, "all the lots are conforming size, that's the only issue, it's a pretty simple issue and I understand it's one that this board and the Planning Board have wrestled with, but until you change the regulations."

June Purington asked, "at what point would the number of houses on a driveway make it constitute a private road?"

Mr. Ryan responded, "it's going to be a private road unless it is submitted to the Town to be a public road, and this isn't. Anybody that buys these houses will be required, it is part of the deed, will be required to sign a driveway agreement with their fellow neighbors for the upkeep and maintenance of it. The Town will have nothing to do with it. The Town is not going to plow it, the Town is not going to maintain it. It is not being requested to."

Chairman Esenwine stated, "I can't count the number of private roads we have in town with that same situation."

Mrs. Purington added, "we do have an ordinance, denying building permits on private roads."

Mr. Ryan responded, "this isn't a private road though, this is a driveway."

Mrs. Purington added, "when it becomes a driveway for three houses, what's to prevent someone from putting 50 houses on a driveway?"

Mr. Ryan added, "if they all had sufficient frontage there would be no prohibition."

Chairman Esenwine stated, "it would seem to me that we are dealing with semantics and also ways to get around the ordinance. By its very nature the word frontage means the front of the lot."

Naomi pointed the board to article 18.2.1 of the zoning ordinance, which was changed this year on the ballot, states that when creating lot sizes using the paved road as frontage then the driveway access has to be used on the paved portion.

Mr. Ryan stated, "that's fine it is, it depends on what you meant by entrance. Our position is clear that there is no legal requirement in the Town of Weare Zoning Ordinance that prohibits the use of a common driveway as long as each lot has sufficient frontage on the road."

The board discussed frontage for a while.

Mr. Ryan added, "that again I will go back to our point, that unless it is in your zoning ordinance it's allowed and Mr. Stone's decision was wrong."

Jack Dearborn further read the definition of driveway which reads, shall mean any access to a (singular) lot, it doesn't say 's', a tract, doesn't say 's', and parcel of land, no 's' on land. Mr. Dearborn stated that it appears to him that it is singular and the word "any" can be construed as any one of the three selections and not any lots, plural. Mr. Dearborn offered a different interpretation that if the word lots were plural it would seem that a driveway could be used for more than one lot.

Harry Wetherbee asked why the lots couldn't be accessed by River Road?

Mr. Ryan responded, "they are not saying that they can't."

Chairman Esenwine asked, "why is this beneficial to the property?"

Mr. Ryan responded, "it is beneficial to the property, one because there is wetlands down below and two because of the driveways, would go down and then come up very severely. The driveways can be built, but in order to make them safer for use of all properties it makes more sense to have a common driveway instead of going up and down."

Chairman Esenwine added, "so financially it's to your clients benefit to put in a common driveway rather than to put in separate ones."

Mr. Ryan responded, "I don't think financially because he is going to be selling those lots and he would be passing off that cost on to whoever buys the lots anyway, so it doesn't impact him one way or another. He would just prefer to do it this way for a variety of reasons."

Mrs. Purington stated that she feels that putting three houses on one driveway you've created more than a driveway.

Chairman Esenwine then asked if there were any:

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 7:56 PM.

The next two cases were taken together and Mr. Bridgeman presented both cases. The reason for doing this is because these lots were side by side on the same road and the Charpentier's gave Mr. Bridgeman a letter to represent them.

Case #1103 Jude & Pat Charpentier (Owner: Allan Laduke)(Cont'd Hearing)  
Variance, Article 17, Section 17.1.1  
Applicant is proposing to build a single-family home.  
Tax Map 403-163 Reynwood Lane (Private)

David Bridgeman was present on behalf of the Charpentier's who are on vacation. Mr. Bridgeman explained that the Charpentier's would like to build a single-family home on this lot on Reynwood Lane, which is a private road. They would like to build a single-family home on the lot next door to this lot on Reynwood Lane. Mr. Bridgeman proceeded through the five points of hardship as follows:

1. That there **will not** be a diminution of value surround properties as a result of the granting of this variance because: already several existing single family homes on the road.
2. That the granting of the variance **will not** be contrary to the public interest because: conforms with residential zoning, and home will be of new construction.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in it's environment for the following reasons: the land lends itself for another single family residence.
  - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: the road is maintained by the residents on the road.
  - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: will meet all single-family requirements, it's over a 2-acre lot.

4. That by the granting of this variance, substantial justice **will** be done because: will increase Town's tax base, will better the area and help increase value of existing homes.
5. That the use contemplated by the petitioner as a result of this variance **will not** be contrary to the spirit of the ordinance because: there are already single and multi family homes before and after this lot.

Case #1203    David & Kathleen Bridgeman (Owner: Allan Laduke)  
Variance, Article 17, Section 17.1.1  
Applicant is proposing to build a single-family home.  
Tax Map 403-164                      Reynwood Lane (Private)

Mr. Bridgeman went through these five points of hardship at the same time he went through the above points as follows:

1. That there **will not** be a diminution of value surround properties as a result of the granting of this variance because: there are already existing homes on this road.
2. That the granting of the variance **will not** be contrary to the public interest because: another homeowner (the applicant) will contribute to the maintenance of the road. Also, the house I will have built will increase the value of the houses on the street.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in it's environment for the following reasons: the lot meets all other requirements for a single family home and the area is well suited for a new construction single family home.
  - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: The road is currently maintained by the current residents of the street. This maintenance will be contributed to by myself as well.
  - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: The road is currently maintained by the residents of the road. I will also contribute to the necessary maintenance.
4. That by the granting of this variance, substantial justice **will** be done because: It will improve the look and value of the area and surrounding houses.
5. That the use contemplated by the petitioner as a result of this variance **will not** be contrary to the spirit of the ordinance because: of already existing homes, both single and multi family on this road both before and beyond this lot.

Approving Abutters: NONE  
Disapproving Abutters: NONE

Public At Large: Matt Esenwine, son in law of landowner at the end of the street. Mr. Esenwine stated that he would like the board to understand that the road seems longer than 2/10<sup>th</sup>s of a mile long as previously stated. From the Hatch's to his mother-in-laws house is what is being maintained by his mother-in-law and that is not all of Reynwood Lane. Reynwood Lane begins at Route 77 and goes clear down to his mother-in-laws house. Mr. Esenwine's point being that the length of the road doesn't start at Hatch's it starts at Route 77.

Other Boards: NONE

Rebuttal of Applicant: Mr. Bridgeman basically clarified that going on record for the one third was basically for the current portion that his mother-in-law maintains. The people on the road only seem to maintain to their own houses and he was going on record to help maintain the portion that his mother-in-law maintains, but if it has to be for the entire road, he would agree to that as well.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:25 PM.

Case #1303    Kenneth Desjardins Builder, LLC (Owner: Robert J. Covino)  
Special Exception, Article 27, Section 27.3.10  
Applicant is proposing on site septic systems in a cluster development.  
Tax Map 402-67.13-67.16                      Meadow Drive

Dave Collier from Richard Bartlett and Associates was present to discuss this case. Mr. Collier gave the board a permission letter from the current owner, Robert Covino for Richard Bartlett and Associates and/or Kenneth Desjardins Builders to represent them. Mr. Collier explained that they are here to obtain a special exception to install individual septic systems in a cluster development, which was conditionally approved by the Planning Board subject to obtaining a special exception and receiving a road bond. The board reviewed and discussed this plan. The board had concerns and wanted the applicant to provide more information because of the soils types to prove that individual septic systems can fit on each lot without waivers having to be granted. The board had Mr. Collier go through the seven requirements, which are as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: The proposed development meets the cluster requirements and is within an existing residential neighborhood, the lots are sized to meet the requirements for septic system loading.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed use is similar to other uses in the area and within the area that was planned for residential development.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: A traffic study of the proposed development has been completed and shows no significant impact.

4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: Individual septic systems on each lot will not be a burden on basic Town services.
5. Adequate off-street parking to be provided if determined necessary by the Zoning Board of Adjustment: Each lot will have two paved parking spaces as required by zoning.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: A 100 foot buffer is provided along the perimeter property lines of the proposed development.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:

Approving Abutters: NONE

Disapproving Abutters: George Coidakis, 6 Meadow Drive, expressed his concerns about the septic loading in a small area, sandwiched between the real steep area and a wetland, an increase in traffic and the affect it might have on his well water.

John Rettig, stated that Mr. Coidakis covered all his concerns so he won't repeat them in the essence of time.

Rebuttal of Applicant: Mr. Dave Collier, Richard Sargent and Associates gave the board more information in regards to the traffic study which was previously discussed.

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions from the board, Chairman Esenwine closed this hearing at 9:20 PM.

The board evaluated the time and stated that there are 6 more cases. The board will do it's best to get to the majority of agenda but at 10:00 PM those cases that are not heard will be continued to next month.

Case #1403 Mark Przekurat

Special Exception, Article 30-A, Section 30-A.3

Applicant is requesting permission to own and operate a portable sawmill on his property in the Mt. Dearborn Historic District Overlay.

Tax Map 408-055

99 Mt. Dearborn Road

Mark Przekurat was present. The board discussed at length why Mr. Przekurat was here and why it was different from the last time. Chairman Esenwine stated that Mr. Przekurat was in before which was denied and now you are coming back in to the board again and the applicant needs to explain to the board why this

application is different from what he had asked for the last time. Mr. Przekurat stated that this is a separate application and different from the other one because this simply is asking for permission to own and operate a portable sawmill and has no other information in it that was on the other one. The plan is simply to own and operate. Naomi went and got the old applications. There were two applications, the first application, which was granted to operate a sawmill, which is allowed by special exception. The second application was denied because the board felt it was a development because of the activities that were going to go on associated with the sawmill operation in the Historic District. After discussing this with Mr. Przekurat the board felt this application has changed from the last and really didn't see to what degree the board could hear this to grant him a special exception because it is a use that he already has permission to do. The board suggested that he really should go back to Mr. Stone and ask his permission to do this. If Mr. Stone denies him the use, he could then come back to the board for an administrative appeal, but the board really didn't have a case in which to make a decision on. The board closed this hearing at 9:43 PM.

Case #1503 Patricia Hines  
Variance, Article 3, Section 3.5.1  
Applicant is requesting permission to construct a 14' x 30'  
addition onto the existing home within the setback.  
Tax Map 109-091 95 Daniels Road (Private)

Mrs. Hines was present. The board discussed the maps that were submitted and felt that being the lot is a very small lot they would like to see a surveyor drawn plan and come back next month. Mrs. Hines explained that she was going to have a surveyor plot out the dimensions before they build. The board asked Mrs. Hines to have the surveyor plot out the distances and come back next month, whether the surveyor is hired before the hearing or after, it still wouldn't be wasting any time.

It being 10:00 PM the board decided to continue the remaining 4 cases to next month as well. Chairman Esenwine stated that we would be continuing these to August 5, 2003.

Case #1603 Peter T. & Sandra E. Scott  
Administrative Appeal, Article 14, Section 14.1  
Applicant is alleging an error was made on 5/8/03 for a request to  
subdivide the existing 4.9-acre lot into two lots on Martin Road.  
Tax Map 408-160 69 Martin Road

Continued to August 5, 2003.



- Case #1703 Peter T. & Sandra E. Scott  
Administrative Appeal, Article 14, Section 14.1  
Applicant is alleging an error was made on 5/8/03 for a request to  
subdivide the existing 4.9-acre lot into two lots on Martin Road.  
Tax Map 408-160 69 Martin Road

Continued to August 5, 2003.

- Case #1803 Donald & Michelle Miller  
Variance, Article 18, Section 18.2.3  
Applicant is requesting permission to relocate an existing shed  
within the setback of the property.  
Tax Map 407-110 72 Lafrance Road

Continued to August 5, 2003.

- Case #1903 Gary Kitteredge  
Variance, Article 24, Section 24.6.1  
Applicant is requesting permission to build a temporary shed to be  
built on the west side of Country 3 Corners. The shed will host  
equipment used in a treatment system.

Continued to August 5, 2003.

### **III. CASE DECISIONS:**

- Case #0903 William H. Boisvert (Continued Hearing)  
Administrative Appeal  
Applicant alleges that the Building Inspector made an error on  
1/30/03 by not allowing single-family homes to be constructed on  
lots utilizing a common driveway.  
Tax Map 406-51.3, 51.6 & 51.7 River Road

Jack Dearborn moved to find in favor of the applicant on case #0903 as submitted, June Purington seconded the motion. Discussion: Harry Wetherbee stated that he does have the minimum frontage that is required on River Road, and the reason he doesn't want to access the frontage is because he doesn't want to cross wetlands. Should there be consideration to the preservation of a small piece of contiguous wetlands? The rest of the board felt that without having a lot of details about the size of the wetlands and just looking at a copy of the tax map provided, it could only be a stream and not a wetlands, and a culvert under a driveway could possibly be all that is needed. The board also felt that the definition of driveway in the ordinance states that one lot, one driveway. Mrs. Purington further added that in the letter it stated that when the lot line adjustment was done there was no mention of any plan of using a common driveway. Chairman Esenwine then clarified that a yes vote on the motion means that the

board is voting in favor of the applicant and a no vote means that the Building Inspector's decision is upheld. A vote was taken: 0 in favor, 4 against (Purington, Esenwine, Dearborn, Wetherbee), therefore the board upheld the building inspector's decision.

Case #1103 Jude & Pat Charpentier (Owner: Allan Laduke) (Continued)  
Variance, Article 17, Section 17.1.1  
Applicant is proposing to build a single-family home.  
Tax Map 403-163 Reynwood Lane (Private)

Case #1203 David & Kathleen Bridgeman (Owner: Allan Laduke) (Continued)  
Variance, Article 17, Section 17.1.1  
Applicant is proposing to build a single-family home.  
Tax Map 403-164 Reynwood Lane (Private)

The board took these two applications together. The board went through the five points of hardship. Point #1: Chairman Esenwine moved to accept point #1, June Purington seconded the motion. Jack Dearborn stated that these are the two last lots in this subdivision, the rest of the lots are built on. This subdivision was done prior to zoning. Mr. Dearborn felt that they should have the same right and the same enjoyment as the rest of the lot owners. Harry Wetherbee asked if the board could impose some conditions on improving the road. The board responded, yes. Vote: Unanimous vote in favor (Purington, Esenwine, Dearborn, Wetherbee). Point #2: June Purington moved to accept point #2, Harry Wetherbee seconded the motion. Vote: unanimous vote in favor (Purington, Esenwine, Dearborn, Wetherbee). Points #3a, 3b & 3c: June Purington moved to accept point's 3a, 3b & 3c, Harry Wetherbee seconded the motion. Vote: unanimous vote in favor (Purington, Esenwine, Dearborn, Wetherbee). Point #4: June Purington moved to accept point #4, Jack Dearborn seconded the motion. Vote: 3 in favor (Purington, Dearborn, Wetherbee) and 1 against (Esenwine), therefore motion carries. Point #5: June Purington moved to accept point #5, Harry Wetherbee seconded the motion. Vote: 3 in favor (Purington, Dearborn, Wetherbee) and 1 against (Esenwine), therefore motion carries. June Purington moved to approve cases #1103 & #1203 with the conditions:

1. Reynwood Lane must be upgraded to a state that the Road Agent and Fire Chief believes is safe for the passage of emergency vehicles and vehicular traffic.
  2. The road improvements must be done and approved by the Road Agent prior to any building permit being issued.
  3. Town of Weare liability disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
  4. Private Road sign be posted at the entrance of the road.
- Jack Dearborn seconded the motion. Vote: Unanimous vote in favor (Purington, Esenwine, Dearborn, Wetherbee)

Case #1303 Kenneth Desjardins Builder, LLC (Owner: Robert J. Covino)  
Special Exception, Article 27, Section 27.3.10  
Applicant is proposing on site septic systems in a cluster development.  
Tax Map 402-67.13-67.16 Meadow Drive

Jack Dearborn moved to approve case #1303, June Purington seconded the motion. Discussion: Harry Wetherbee discussed imposing the condition of having a site-specific soils survey, which may alter some of those lot configurations. The board questioned who is certified and will check the accuracy of the plan. Jack Dearborn then withdrew his motion to approve, June Purington withdrew her second. Jack Dearborn then moved that the board continue this hearing to next month and require the applicant to provide a Site Specific Soils Survey on the developed lot area, June Purington seconded the motion, all in favor.

Case #1403 Mark Przekurat  
Special Exception, Article 30-A, Section 30-A.3  
Applicant is requesting permission to own and operate a portable sawmill on his property in the Mt. Dearborn Historic District Overlay.  
Tax Map 408-055 99 Mt. Dearborn Road

Forrest Esenwine moved to dismiss case #1403, June Purington seconded the motion, unanimous vote in favor (Purington, Esenwine, Dearborn, Wetherbee). The reason being that there appears to be no means for addressing a special exception in Article 30-A.

Case #1503 Patricia Hines  
Variance, Article 3, Section 3.5.1  
Applicant is requesting permission to construct a 14' x 30' addition onto the existing home within the setback.  
Tax Map 109-091 95 Daniels Road (Private)

June Purington moved to continue this case to August 5, 2003 to allow the applicant to get a certified survey, Forrest Esenwine seconded the motion, unanimous vote in favor (Purington, Esenwine, Dearborn, Wetherbee).

#### **IV. OTHER BUSINESS:**

JUNE 3, 2003 MINUTES: Chairman Esenwine moved to approve the June 3, 2003 minutes as amended, Jack seconded the motion, all in favor.

APPOINTMENT OF MEMBER: Forrest Esenwine moved to send a letter to the Board of Selectmen recommending that Harry Wetherbee be moved from an

alternate member to a full board member, June Purington seconded the motion, all in favor.

OFFICER CHANGE: Forrest Esenwine moved to appoint Jack Dearborn as the Vice President to fill the seat left vacant when Terry Knowles resigned, June Purington seconded the motion, all in favor.

**V. ADJOURNMENT:**

As there was no further business to come before the board, Jack Dearborn moved to adjourn at 11:00 PM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator